

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA - NEW ALBANY**

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IN THE MATTER OF:	.	Case #10-93904-BHL-11
	.	
EASTERN LIVESTOCK CO., LLC	.	New Albany, Indiana
	.	<b>December 13, 2010</b>
Debtor	.	2:02:50 p.m.

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**TRANSCRIPT OF EMERGENCY TELEPHONIC HEARING RE:  
(#27) - Page 4 - EMERGENCY MOTION TO APPOINT TRUSTEE, AND  
AUTHORIZING AND DIRECTING INTERIM TRUSTEE TO OPERATE DEBTOR'S  
BUSINESS, FILED BY PETITIONING CREDITORS MOSELEY CATTLE AUCTION,  
LLC, DAVID L. RINGS, SOUTHEAST LIVESTOCK EXCHANGE, LLC;  
(#52) - Page 10 - MOTION FOR AUTHORITY TO OPERATE IN THE PRE-  
APPOINTMENT PERIOD, FILED BY OTHER PROFESSIONAL,  
ELIZABETH M. LYNCH  
BEFORE THE HONORABLE BASIL H. LORCH, III, J.U.S.B.C.**

**APPEARANCES:**

<u>For Petitioning Creditors, Moseley Cattle Auction, Moseley Cattle Auction, et al:</u>	JOHN W. AMES, ESQ. C.R. "CHIP" BOWLES, ESQ. Greenebaum, Doll & McDonald, PLLC 3500 National City Tower 101 S. 5 <sup>th</sup> Street Louisville, KY 40202
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<u>For the U.S. Trustee:</u>	CHARLES R. WHARTON, AUST Office of the U.S. Trustee 101 W. Ohio Street Suite 1000 Indianapolis, IN 46204 -----continued----->
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**APPEARANCES: (continued)**

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For Fifth Third Bank:

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For Republic Bank & Trust Company:

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**APPEARANCES: (continued)**

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related entities:

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Trustee for Thomas Gibson Bankruptcy Estate:

KATHRYN L. PRY (*Via phone*)

For Friona Industries:

JOHN FREDERICK MASSOUH, ESQ.  
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For Cactus Growers, Inc.:

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**APPEARANCES: (continued)**

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For CPC Livestock:

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1 (At 2:02:50 p.m.)

2 NOTE: Speaker identification, when uncertain, is noted as  
3 "ATTORNEY"

4 \* \* \* \* \*

5 THE COURT: Everybody's on the phone for this one,  
6 and the phone calls are already in here, and it's not easy to  
7 shift in midstream.

8 SPEAKER: (unclear) anticipating another hearing,  
9 so --

10 (Long pause)

11 MR. AMES: Judge, I guess with the exception of  
12 Ms. Lewis, who may be in the restroom at the moment, I think  
13 everybody else that was originally here is now back here, so  
14 by the time we all become recognized, she may be back.

15 THE COURT: Okay. Let's take the appearances for  
16 the record, please.

17 MR. AMES: Your Honor, for the movants, John W.  
18 Ames and Chip Bowles of Greenebaum, Doll & McDonald.

19 MR. ROGERS: Your Honor, for the state court  
20 appointed Receiver, Jeremy Rogers; and joining me shortly  
21 hopefully will be Kim Lewis.

22 MR. CARR: John Carr and Bret Clement for First  
23 Bank & Trust; and also Dan Donnellon and Steve Weigand, who  
24 pre-filed their motions for *pro hac* admission this morning,  
25 Your Honor.

1 THE COURT: All right.

2 MR. LaTOUR: Good morning, Your Honor. Randall  
3 LaTour from Vorys, Sater, Seymour & Pease, representing Fifth  
4 Third Bank.

5 MR. KING: Ted King as local counsel for Fifth  
6 Third, Your Honor.

7 MR. WHARTON: Chuck Wharton for the United States  
8 Trustee.

9 MS. PRY: Kathryn Pry. I'm the Trustee on Thomas  
10 Gibson personal bankruptcy (unclear, not near microphone;  
11 voice dropped)

12 MR. MEYER: Rob Meyer, for Republic Bank & Trust  
13 Company.

14 THE COURT: And appearing by phone.

15 MS. DEL COTTO: Good afternoon, Your Honor. Laura  
16 Day DelCotto, DelCotto Law Group, appearing for Bluegrass  
17 Stockyards, LLC, and certain of its affiliated entities.

18 MR. WEGNER: Good afternoon, Your Honor. Jeff  
19 Wegner of the law firm Kutak Rock appearing on behalf of  
20 Wells Fargo Capital Finance.

21 MR. BRUMFIELD: Your Honor, this is Chris  
22 Brumfield, and I'm general counsel for Farm Credit West,  
23 which owns the stock, Superior Livestock Option.

24 MR. LOVELL: John Lovell on behalf of Cactus  
25 Growers.

1 MR. LeBAS: David LeBas on behalf of J&F Oklahoma  
2 Holdings.

3 MR. MASSOUH: John Massouh on behalf of Friona  
4 Industries.

5 MS. YATES: Jessica Yates (phonetic) on behalf of  
6 CPC Livestock (phonetic).

7 THE COURT: All right. We're here this afternoon  
8 on two matters. There's a motion to appoint the Trustee,  
9 and authorizing the Interim Trustee to operate debtor's  
10 business; and a motion for authority to operate in the pre-  
11 appointment period, filed by Mr. Rogers on behalf of  
12 Elizabeth Lynch. Mr. Ames.

13 MR. AMES: Your Honor, I can proceed. Should we  
14 see if Ms. Lewis is on her way back?

15 ATTORNEY: I can go get her, Your Honor --

16 THE COURT: All right.

17 ATTORNEY: I appreciate it.

18 MR. AMES: Maybe Liz might be better suited to go  
19 get her.

20 (Long pause)

21 THE COURT: All right, Mr. Ames.

22 MR. AMES: Your Honor, once again, we thank the  
23 Court for -- for -- may I please remain seated, Your Honor?

24 THE COURT: You may.

25 MR. AMES: We'd like to thank the Court for

1 accommodating us once again on such short notice. As this  
2 Court is aware, last Tuesday, less than one day after the  
3 involuntary petition was filed, the Court held a telephonic  
4 hearing. That hearing resulted in an order from December  
5 8th that basically appointed Elizabeth M. Lynch the Receiver  
6 in the Ohio state action to continue as the Custodian, to  
7 administer the debtor's property under certain limitations.

8 The second order was also entered that day that  
9 dealt with providing protocol for the safekeeping, sale, and  
10 segregating of the sales proceeds, while recognizing that  
11 there are multiple interests; and also allowing the Custodian  
12 to pay those expenses that -- that are necessary in incurring  
13 the sale -- carrying out the sale.

14 The debtor management, Your Honor, did not appear,  
15 nor did anyone assert a defense or contest that motion.  
16 There have been -- there were no objections at that time, and  
17 in think this spoke volumes not only to the Court but to the  
18 intervening movants, the petitioning creditors in this  
19 action. And as the Court found that there was cause to --  
20 for the entering of that order at that time, and a cause  
21 exists again today, Your Honor.

22 Today is the next and the logical step in this  
23 proceeding, and we wish to have the Court order the U.S.  
24 Trustee's Office to appoint the U.S. Trustee.

25 Now since that -- since we met last Tuesday by



1 telephone, there's been certain things that have happened,  
2 certain things that haven't happened; and one of the things  
3 that hasn't happened, Your Honor, is there has been no  
4 objection to this motion. And as far as I'm aware, there  
5 has not been an appearance by the debtor, nor any of the  
6 respondents, or the management.

7 Now we have had informal contact with Ms. Pry, who  
8 is present in the courtroom today, with the -- hoping to have  
9 an indication -- and Ms. Pry is very new to the case and is  
10 seeking counsel, and certainly will be able to speak in a  
11 bit.

12 One of the other things that's happened is that  
13 additional parties have stepped forward, both in becoming  
14 intervening petitioners for the involuntary, but also in  
15 becoming movants in this action. And I'd like to take just  
16 a second, Your Honor, because last Tuesday there might have  
17 been a little bit of confusion with respect to Superior  
18 Livestock.

19 Superior has a very sizeable claim, and their claim  
20 is somewhere in the neighborhood of twenty million dollars,  
21 and there were certain statements made at that hearing that  
22 may not have accurately reflected Superior's position. And  
23 since that time Superior has employed Greenebaum, Doll &  
24 McDonald, and Mr. Brumfield is on the line with us right now;  
25 but I'd like to just indicate to the Court, to eliminate any

1 misunderstanding that Superior is a very supportive -- fully  
2 and completely supportive of the motion to appoint an Interim  
3 Trustee, and certainly any aspersions that were cast toward  
4 the Receiver and the Custodian were ill-placed.

5 THE COURT: Okay, let me -- let interrupt for just  
6 a second. I don't -- I don't think we're going to appoint  
7 an Interim Trustee. I don't really think the Interim Trustee  
8 provision applies, although I understand there are some cases  
9 where it's been used. I think what we're going to decide  
10 this afternoon is whether to appoint a Trustee under 1104.  
11 So let's -- let's proceed on that basis.

12 MR. AMES: Your Honor, I was hoping Your Honor  
13 would say that, because I think the quantum of proof in the  
14 standards are relatively the same for both. As a matter of  
15 fact, the statutory authority, 11 USC Section 303(g) has this  
16 Court having the ability to so place under 1104 and also 11  
17 -- in Section 105.

18 Your Honor, we had, both in the emergency motion  
19 that was filed last week, in a memo -- I hope the Court has  
20 had an opportunity to file -- we just filed it this morning  
21 -- supply the Court with case law. And one of the things  
22 that is a little bit unusual is that we were asking for  
23 relief prior to an order for relief for -- for the Chapter 11  
24 that we're also seeking which (unclear) will come at another  
25 time.

1           However, there is ample case law that allows for  
2 such, and in all probability the voluntary will be not  
3 contested, and ultimately there will be an order for relief  
4 granted by the Court.

5           Now, Your Honor, there is no question but that  
6 there is ample cause existing under 1104, taking 1104 by its  
7 individual requirements: Fraud, dishonesty, incompetence,  
8 gross mismanagement of the affairs of the debtor. These are  
9 all certainly non-exclusive, but we hone in on is what's in  
10 the best interest of the estate, and we think that that  
11 certainly -- without there being any management, any control  
12 over these assets, it almost -- it just speaks for itself.

13           There is undisputed submission of evidence by  
14 dishonored checks, the appointment of the Trust -- of a  
15 Receiver in the state action of Ohio; non-appearance of the  
16 management in either that Ohio action or in this Court; the  
17 numerous governmental investigations by GIPSA; the findings  
18 of fact and conclusions of law of the Ohio State Court; and  
19 we have included as exhibits the complaint, the order of  
20 Judge Winkler, and the declaration of John Mosely and David  
21 Rings.

22           And Mr. Rings and Mrs. Rings are here. They've  
23 driven up from Russell Springs, Kentucky this morning --  
24 three hours in the snow -- to indicate to the Court that  
25 they've got a check that was returned, "Refer to Maker" for

1 \$7,145; and there are many other creditors that -- and  
2 claimants that stand ready to testify, so -- should the Court  
3 so desire.

4 THE COURT: Was there any dispute in this case  
5 that there are millions of dollars of checks that have not  
6 been honored, that had been dishonored? Is that undisputed?

7 MS. LEWIS: Your Honor, this is Kim Martin Lewis  
8 on behalf of the Receiver. I believe it is undisputed at  
9 the ledger that we had received from the bank after the  
10 Receivership, is there was approximately 82 million dollars  
11 of dishonored checks for that period immediately prior to the  
12 Receivership.

13 THE COURT: Okay.

14 MR. AMES: So, Your Honor, between that and the  
15 ability to take judicial notice of what all has occurred,  
16 both with GIPSA and their investigations, their -- their  
17 administrative proceedings that had been filed, and these are  
18 also submitted as Exhibit C to our motion.

19 The ample proof that we can put on is certainly --  
20 we've got folks here. We have folks that probably are on the  
21 way still; but we think that this Court has the ability to  
22 make a judicial finding by clear and convincing evidence, and  
23 we can proceed how the Court so desires, after comment from  
24 other counsel of interest.

25 THE COURT: Would anybody like to comment or speak

1 in favor or in opposition to the motion for the appointment  
2 of a Trustee?

3 (No response)

4 THE COURT: All right, the Court is convinced,  
5 after having reviewed the pleadings in this matter and having  
6 determined that two crucial facts are undisputed. I mean, I  
7 don't know what any government investigations will reveal,  
8 but I do know there is a -- there is at present a lack of  
9 management. There is nothing -- there is no one running the  
10 business, other than the Receiver; and there was no  
11 opposition to the Receiver motion.

12 I do know there are millions of dollars of checks  
13 that have been returned unsatisfied; and I think those two  
14 findings alone are sufficient and establish cause under  
15 1104(a)(1) and certainly indicate that the appointment is in  
16 the best interest of creditors, as set forth as a basis under  
17 1104(a)(2).

18 There is also -- well, I really think that's the  
19 only findings we need, really, is I will find that there is  
20 basis for 11 -- under (1) and (2) for the appointment of a  
21 Trustee. As I indicated earlier, I think that the Interim  
22 Trustee provision is only applicable to 7s, that this is the  
23 appointment of a Chapter 11 Trustee who will have the  
24 authority to operate the debtor in possession, liquidate the  
25 debtor in possession; basically stand in the shoes of the

1 debtor in possession and do whatever is necessary to fulfill  
2 his or her fiduciary responsibilities to the creditors in  
3 this case.

4 Now, Mr. Wharton, what's the current status of the  
5 inquiries I'm sure you have already made concerning the  
6 appointment of a Chapter 11 Trustee?

7 MR. WHARTON: Your Honor, our office anticipating  
8 today's hearing and the Court's likely ruling, we -- from my  
9 level have provided and anticipated, and Ms. Gargula is aware  
10 that this order would likely happen today. To the extent  
11 I'm able to assure the Court, we will expedite the process of  
12 selection as quickly as we can. I don't have the ability to  
13 give you a number of days or an amount of time that that  
14 process will take. The case has a lot of facets to it, and  
15 I think that she's going to want to carefully consider the  
16 suggestions of what people -- the parties in interest tell  
17 her as far as who the Chapter 11 Trustee should be.

18 So with that, we've -- I've got the process started  
19 as quickly and as expeditiously as we can.

20 THE COURT: All right, I appreciate that. And  
21 that, of course, leads right into the second emergency motion  
22 that's on file today, which is to asking the Court to allow  
23 the Receiver to operate to some extent until there is a  
24 Trustee in place.

25 So let's talk a little bit about that -- about what

1 the Receiver has been doing since we were in court last time;  
2 whether there's any confusion about the scope of duties;  
3 whether the scope of duties need to be expanded or reduced  
4 going forward until we get a Trustee in place.

5 MR. WHARTON: And, Your Honor, my concern with  
6 regard to that -- I don't object to (unclear) motion in  
7 principle, and part of what was about to be and has been  
8 made, discussed this afternoon is funding for either the  
9 operations of the current Custodian or the projected Chapter  
10 11 Trustee, and the secured creditors who are here and  
11 represented, along with the other parties, had been  
12 brainstorming some potential ways to either assure that or at  
13 least somehow equitably allocate those necessary costs.

14 And so as we go forward with this, I'd like that to  
15 be at least part of what's in front of the Court's mind as  
16 far as what we're looking to see happen.

17 THE COURT: All right. Ms. Lewis --

18 MS. LEWIS: Your Honor --

19 THE COURT: -- do you want to address your motion?

20 MS. LEWIS: -- since the last hearing, the  
21 Trustee -- or the Receiver did, in fact, sell some cattle --  
22 some of the cattle that was listed in our Exhibit A. They  
23 were completed last Thursday of last week to get proceeds  
24 into the escrow account.

25 The Receiver has not continued to make phone calls

1 for the accounts receivable; however, there were a  
2 significant amount of correspondence that the Receiver had  
3 sent out to parties, to, number one, find out whether or not  
4 there were receivables due and owing, and how much is due and  
5 owing because I think, as you've heard a little bit on the  
6 phone last time, the records are very difficult to get  
7 through, and we are trying to work with both -- both sides --  
8 Our customers as well as those people that we have allegedly  
9 sold cattle to -- to determine whether or not we have cattle  
10 there, or whether or not there are accounts receivable due  
11 and owing.

12           So since the last hearing we haven't made phone  
13 calls, though we have responded to inquiries, and there have  
14 been obviously significant amount of inquiries to the  
15 Receiver to determine -- and a lot of people have come out of  
16 the woodwork and said, you know, "We've got some cattle here.  
17 You've got it's listed as a receivable, but that's really not  
18 how our arrangement worked. Our arrangement was that you  
19 shipped your cattle here, they grazed on our land, and at the  
20 end of the day those were your cattle, and you were just  
21 financing the feed."

22           So there are about four or five different  
23 arrangements that Eastern Livestock was engaged in prior to  
24 the Receivership, of which the Receiver is finding out which  
25 categories each one of these falls into.



1           There are employees that are still at Eastern  
2 Livestock. It has been critical for the Receiver to have  
3 those parties to help build what isn't in the computer  
4 databases. So in other words, to -- a partic -- if there was  
5 a receivable for seven million dollars, she has used some of  
6 the people that participated in the conversations with those  
7 parties in the past to help try to build what that receivable  
8 is based on. It's been necessary for her to use those people  
9 to assist her in building a lot of the records that are going  
10 to be used in this case ultimately for the benefit of all  
11 creditors.

12           The -- one of the other line items that was in the  
13 budget was a computer line item, software line item -- where  
14 is it? -- (pause) -- Computer Technical Support. What  
15 happened last week is we got viruses that invaded the  
16 computers. We need someone to assist to get those viruses  
17 cleared so that we're able to continue the process of  
18 identification of cattle and identification of receivables.

19           Also, the computer systems are very antiquated, so  
20 prior to the involuntary being commenced, Ms. Lynch, on  
21 behalf of the Receivership estate did, in fact, employ  
22 someone to take images of all of the computers so that they  
23 are save capped at this point in time, but we're not able to  
24 access that data because we've got viruses on it right now.  
25 So that's the purpose of the \$3,200 that we need this week in

1 order to access the information for both inventory and  
2 receivables.

3           The utility costs are included in there, and also  
4 the cost of the feed is included in there. We did not  
5 include in there, although the mortgage payment on the  
6 building, which is owned by Eastern Livestock, is due this  
7 week; and Republic Bank is -- is here today. We did not  
8 include that in the emergency budget because we thought that  
9 was something that would have to be discussed as far as the  
10 valuation and whether or not they're over- or under-secured,  
11 which at this point in time I couldn't tell Your Honor  
12 whether we're over- or under-secured.

13           And the health --

14           THE COURT:   Who -- whether who's over- or under-  
15 secured?   Republic, or -- ?

16           MS. LEWIS:   Republic. Correct. Their sole  
17 security interest is on the building itself, where Eastern  
18 Livestock's headquarters are.

19           And we kept -- we tried to keep the budget to very  
20 minimal. As you'll note in the budget there are no payments  
21 for a Receiver or DSI that is supporting the Receiver, or  
22 counsel for the Receiver. As the parties are all aware,  
23 those are just accumulating expenses, but they're -- that's  
24 not something that is going to be paid out of the emergency  
25 budget.

1           When I talked to Mr. Wharton on Friday, he  
2           indicated to me that he would probably not be in a position  
3           to appoint a Trustee today, in which case I asked DSI to put  
4           together a one-week budget so that we could put something  
5           before the Court because we knew payroll was due tomorrow,  
6           and that was -- it was critical for us to make those payroll  
7           amounts and the health insurance and other things, which we  
8           would have to ask obviously everyone to go home if we were  
9           not going to be making payroll.

10           THE COURT:   Well, these employees, these are not  
11           the principals of the debtor, right?

12           MS. LEWIS:   These are not the principals, Your  
13           Honor.   How many employees --

14           MS. LYNCH:   There's --

15           MS. LEWIS:   Your Honor, this is Ms. Lynch, and  
16           she's the Receiver.

17           MS. LYNCH:   Good afternoon, Your Honor.   There are  
18           six employees, two of whom had worked in the shipping area,  
19           which has been critical to us, to help to try to track and  
20           identify where the inventory has been shipped to.   The four  
21           others are accounts receivable and other folks involved in  
22           the contractual side of the business, and they've really been  
23           helping recreate and rebuild the records, both related to the  
24           returned check activity for which there needed to be  
25           reconstruction of the books and records related to that, as

1 well as further identifying the granular -- every account  
2 filed that we've encountered, there appears to be some --  
3 there's a story with it; and we are documenting that and  
4 building those account records so that we can better  
5 understand who owes this money, who doesn't, and what the  
6 potential claims are to each of those balances. It's very  
7 manually intensive.

8 THE COURT: But it -- prior to the filing of the  
9 bankruptcy, how did you anticipate the Receiver being paid?

10 MS. LYNCH: It was funded both by advances from  
11 Fifth Third and their participant, as well as from cash  
12 collections. To date, Your Honor, we have collected about  
13 \$700,000 from the collection of accounts receivable, most of  
14 which pre-date the involuntary action; and a smaller amount  
15 -- 64,000 -- a subset of that was from the sale of the cattle  
16 on Thursday.

17 THE COURT: But when you say "from cash," I'm  
18 assuming that that cash is claimed by Fifth Third as part of  
19 its collateral and may be claimed by somebody else as part of  
20 *their* collateral. So in the state court Receivership, other  
21 than Fifth Third, were other secured creditors participating?

22 MS. LYNCH: Save their participant, no, sir.

23 MR. DONNELLON: I (unclear)

24 THE COURT: Save their participant -- oh, their  
25 loan participant.

1 MS. LYNCH: That's right.

2 MS. LEWIS: Other -- although, Your Honor, right  
3 before the involuntary was commenced, there was a motion to  
4 intervene on behalf --

5 MR. DONNELLON: Yes. Dan Donnellon for First Bank  
6 and Trust. We moved to intervene in that action, and there  
7 was scheduled to be a hearing before Judge Winkler, I believe  
8 the day after the involuntary was filed. So that's still out  
9 there pending our granting of intervention, but that was the  
10 only action that we took was to -- to intervene in the  
11 action, file a proposed answer and counterclaim, and  
12 objections to some of the issues in the Receiver order.

13 THE COURT: All right. Does anybody other -- I'm  
14 sorry. Go ahead.

15 ATTORNEY -- MR. KING? Or MR. LaTOUR?: (no  
16 identification on log sheet) If I could join that  
17 discussion, Your Honor. At that point in time that Fifth  
18 Third moved the state court to appoint a Receiver, it was the  
19 belief of Fifth Third that the accounts receivable was  
20 approximately 75 million dollars; that the live inventory was  
21 approximately 45 million dollars; that the costs of the  
22 Receivership and the so funding -- although the funds might  
23 at various points in time need to be advanced by Fifth Third  
24 to get it going, there would end up being a surplus.

25 The most recent information -- and I may have to

1 ask Ms. Lynch to fill that in -- is that those numbers are  
2 considerably overstated, and if I may, although she's not on  
3 the stand, Ms. Lynch, could you tell us the currently likely  
4 accounts receivable and known inventory?

5 MS. LYNCH: We have, based on calls that were  
6 commenced at the beginning of the Receivership, we estimate  
7 currently collectable accounts receivable to be approximately  
8 eight million dollars, and we've identified 5,500 head of  
9 cattle in the Eastern system, which has a gross value range  
10 of three-and-a-half to four-and-a-half million dollars.

11 We further anticipate accrued feed costs to date in  
12 those animals is a million five, which is a direct offset to  
13 the recoverable value.

14 MS. LEWIS: There are also approximately 3.7  
15 million dollars of interpled funds in four state courts  
16 throughout the country in which, after the appointment of a  
17 Trustee, that I believe that the Trustee would bring those  
18 actions and seek to have those removed before Your Honor.  
19 So there's approximately 3.7 million dollars outstanding out  
20 there.

21 THE COURT: And what's Fifth Third's claim amount?

22 ATTORNEY: MR. LaTOUR? OR MR. KING?: Your Honor,  
23 Fifth Third has a claim of at least 35 million dollars.

24 In addition, Your Honor, I'd like to inform the  
25 Court that the budget for the Receiver was being dealt with

1 on a week-to-week basis, and that at the time that the  
2 recovery started to outstrip what the expectations were,  
3 there had already been discussions about limiting the  
4 expenditure.

5 I don't think it would be an appropriate assumption  
6 on anybody's part that because Fifth Third was funding  
7 something in the state court Receivership action, that that  
8 necessarily follows that they will, ought to, or are required  
9 to so fund in this situation.

10 The reason that the parties were not all in the  
11 courtroom from the time you took the bench, Your Honor, is  
12 because the secured creditors were negotiating amongst  
13 themselves to try to find a way to deal with the problem of a  
14 liquidating 11 that is not an operating business.

15 If you use a debtor in possession loan, there is no  
16 means to repay the loan. If you use the use of cash  
17 collateral, there's no real way to provide adequate  
18 protection. You're actually dissipating the collateral, but  
19 it's not being replaced. There are no new cattle being  
20 purchased, no new accounts receivables being generated.

21 So that's going to require some creative thinking  
22 to figure out how to do that, and it's going to require some  
23 equitable thinking to determine how that load should be  
24 spread across all the creditors in this case. The cost of  
25 administration of this case is not solely a secure creditor

1 problem. It's the problem of all of these creditors. It  
2 will take some money to avoid losses that can be avoided. It  
3 will take some money to liquidate cattle that currently  
4 exist, but that's the limit of benefits to the creditors, and  
5 so that's -- that's the feeling out process that we're going  
6 to have to engage in, to figure out how to fund this case on  
7 a going-forward basis.

8 As I stand before you today, Your Honor, I do not  
9 have authority from my bank to agree to the use of cash  
10 collateral. My client did not know that this motion existed  
11 until about twenty minutes before the hearing time. I have  
12 not had an opportunity to get their permission to agree to  
13 what this says, no matter what I personally think --

14 THE COURT: Agree to what -- what says?

15 ATTORNEY -- MR. LaTOUR? OR MR. KING?: Well, the  
16 \$92,000 expenditure.

17 THE COURT: I thought your bank is the one that  
18 put the Receiver in place.

19 ATTORNEY: -- MR. LaTOUR? OR MR. KING: Well, as I  
20 said, Your Honor, we put the Receiver in place when we  
21 thought we had 75 million dollars of accounts receivable --

22 THE COURT: Well, I know; but let's say this  
23 bankruptcy had never been filed, and what would you do then  
24 once you've learned that the accounts receivable were less?  
25 Get rid of your own Receiver? I mean, what -- what's the --



1 where do you go?

2 ATTORNEY: -- MR. LaTOUR? OR MR. KING: Well, first  
3 of all, on the order appointing the Receiver, there was not a  
4 commitment to fund that Receiver. There was the  
5 authorization to make a loan to the Receiver, if appropriate.  
6 So one of the things the bank could have decided to do, and  
7 was on the verge of deciding to do, was to not make further  
8 loans, because it was becoming wildly expensive, without a  
9 return that was going to come to the bank.

10 THE COURT: So the bank can go into a state court,  
11 ask for appointment of a Receiver, get a Receiver; that  
12 Receiver starts collecting the accounts, and then the bank  
13 can say, "Well, we're not going to pay the Receiver"?

14 ATTORNEY: -- MR. LaTOUR? OR MR. KING: No, Your  
15 Honor, that's -- that's not -- if I gave that inference, I  
16 misspoke.

17 THE COURT: Well, when you say "stop funding,"  
18 that's the impression I get. Maybe I misunderstood.

19 ATTORNEY: -- MR. LaTOUR? OR MR. KING: Well, what  
20 I should have said was "stop making the loan." Let me  
21 explain briefly Receivership law under Ohio law, which is  
22 where this Receiver was appointed.

23 THE COURT: Briefly.

24 ATTORNEY: -- MR. LaTOUR? OR MR. KING: Very  
25 briefly, Your Honor. First of all, the Receiver is an

1 officer of the Court. The Receiver is not an agent of the  
2 party who moved for the appointment of the Receiver. So the  
3 -- as an officer of the Court they are not indebted to  
4 anybody, they're not obliged to anybody, they don't take  
5 instruction from anybody; but concomitantly, the bank, having  
6 asked for that relief, is not obligated to pay for it,  
7 because under Ohio law there's a statute that says that the  
8 Receiver will be paid out of the proceeds of the  
9 Receivership, as the Court finds is appropriate. It's, in  
10 effect, Your Honor, an analog to the Bankruptcy Code Section  
11 506(c), where, if there is a conferred benefit on creditors  
12 then they share in that cost.

13 So the cost to the Ohio Receivership would not have  
14 been borne solely by Fifth Third Bank. It would have been  
15 shared across all of the creditors --

16 THE COURT: How's that --

17 ATTORNEY: -- MR. LaTOUR? OR MR. KING: -- of  
18 (unclear)

19 THE COURT: How's that possible? If -- if you're  
20 fully -- if you're undersecured, and you have a lien for 35  
21 million dollars, and the assets are less than that, aren't  
22 you going to pay for the Receiver? Nobody else is getting  
23 anything, right? Under those facts.

24 ATTORNEY: -- MR. LaTOUR? OR MR. KING: If the  
25 entirety of what was collected went to the secured creditors,

1 under those facts, that's who would be paying for the  
2 Receiver.

3 THE COURT: And in that -- isn't that what's going  
4 to happen in this case?

5 ATTORNEY: -- MR. LaTOUR? OR MR. KING: I don't  
6 know that we know that, Your Honor.

7 MS. LEWIS: Your Honor, if I may, on that  
8 particular point, there are various parties who are asserting  
9 priority with respect to various claims.

10 THE COURT: I understand.

11 MS. LEWIS: And so it may all be Fifth Third, or  
12 it may be shared among other secured creditors or other  
13 parties that are asserting ownership in the cattle.

14 THE COURT: So it could just say *pro rata*, that  
15 the costs will be shared *pro rata* according to what each  
16 secured creditor receives.

17 ATTORNEY: -- MR. LaTOUR? OR MR. KING: That was in  
18 the nature of what was being discussed in the hallway, Your  
19 Honor -- but that -- that it's not a deal --

20 THE COURT: I should have been a lawyer.

21 ATTORNEY: -- MR. LaTOUR? OR MR. KING: Your Honor,  
22 (unclear)

23 MR. BOWLES: To be clear, Your Honor, I mean, we  
24 had to -- we had to reach some kind of accord among and  
25 between ourselves about what we could advise our clients that

1 they ought to agree do --

2 THE COURT: Well, why don't --

3 MR. BOWLES: -- and then our clients have to agree  
4 to it.

5 THE COURT: Oh, I understand that. Well, then  
6 what -- why don't you guys have a seat for a second, and let  
7 me ask Mr. Ames this question.

8 If now it is -- if we determine that the secured  
9 creditors are going to get all these assets, I mean, they may  
10 fight among themselves as to who gets what, but what are we  
11 doing here?

12 MR. AMES: Judge, there is probably going to be  
13 significant other claims that will be made in addition to  
14 just cattle itself. Causes of action in it, and that has to  
15 be coordinated and certainly can't be lost. It could be very  
16 significant in dollar amounts.

17 THE COURT: Preference claims.

18 MR. AMES: And they're not going to be subject--

19 THE COURT: Fraudulent conveyance claims.

20 MR. AMES: Yes. Perhaps fraudulent conveyances,  
21 maybe a lot of them, and other claims that could exist.

22 THE COURT: All right. Well, go ahead. Do you  
23 want to say something on behalf of the Receiver?

24 MS. LEWIS: No -- I was just doing to say that it  
25 kinds of brings us back to we don't have the appointment of a

1 Trustee, and we were talking to the secured creditors a  
2 little bit before the hearing, but that in order to get to  
3 the appointment of a Trustee, we certainly need to deal with  
4 the expenses the Receiver has, and obviously on a go-forward  
5 basis we were hopeful that we'd be able to reach some kind of  
6 consensus when a Trustee is appointed for some type of 506(c)  
7 proceeding or some type of settlement to deal with how these  
8 expenses were going to be paid.

9 THE COURT: Well, you have three choices: You  
10 can -- the secured creditors can agree as to how you'll be  
11 paid; you -- two, you can bring-- you can go forward without  
12 the assurance that you'll be paid and bring a 506(c) motion;  
13 or, three, you can shut down, and we'll wait for the Trustee  
14 to come in.

15 If you don't want to go forward without the  
16 assurance of being paid, you can stop working, and we'll get  
17 a Trustee in a few days; and if something happens in that  
18 interim, that's the risk the secured creditors were willing  
19 to take because they weren't willing to pay it.

20 I mean, those are the three choices. Right? Does  
21 anybody have a fourth? I'd be willing to listen to a fourth.

22 ATTORNEY: (Not ID'd on log sheet) Well, I suppose a  
23 conversion motion might be (unclear, not near microphone;  
24 voice dropped)

25 THE COURT: Well, a conversion motion is possible,

1 but what -- that doesn't gain us anything, though.

2 MR. AMES: (unclear)

3 THE COURT: I mean, other than an immediate  
4 Interim Trustee who -- I mean, we might get a few days  
5 quicker Trustee, but the -- you know, I would say that the  
6 secured creditors are probably more open to the idea of  
7 having some input into the selection of a Chapter 11 Trustee  
8 who may have some more expertise in this matter. I don't  
9 know.

10 MR. DONNELON: Your Honor, one of the ideas  
11 being kicked around is the debtor in possession loan, but it  
12 would be required to be a priming lien, so that first monies  
13 recovered would repay the loan; my thought being that if  
14 other people find that objectionable, that they be invited to  
15 participate in that on themselves, they'll find that putting  
16 money into the situation is not that enjoyable an experience,  
17 but they're invited.

18 But in terms of conferring a benefit to the  
19 situation generally, in terms of having a finite term of what  
20 that lending commitment would be, both in time and in dollar  
21 amount, that would be something that could be discussed.

22 Now I need to stress, Your Honor, I have zero  
23 authority from my client for any of the brainstorming that's  
24 going on in this discussion; but in an attempt to try to  
25 figure out how to find the balance point between not

1 incurring avoidable losses on the one hand, and not running  
2 roughshod over somebody that happens to be a lender on the  
3 other -- now this case is going to have implications on lots  
4 of ways; and one of the way it's going to have implication is  
5 what happens to banks to loan money to agricultural  
6 operations.

7           So I would urge that while everyone else is being  
8 protected, that some thought be given to protecting banks  
9 that have made these kinds of loans, because it could have a  
10 chilling effect in the future if the situation doesn't work  
11 out in balance.

12           THE COURT: Well, do we -- what you just said fits  
13 into the -- what I set forth as a first alternative; and that  
14 is that the creditors figure out some way to fund it. Now I  
15 don't care how -- what the funding mechanism is. If it's a  
16 loan or it's an agreement to share expenses *pro rata*, or  
17 somebody agrees to pick it up, or you do it with a cap. I  
18 don't care what kind of arrangement you come to.

19           But all I'm saying is I only see -- I mean, if you  
20 don't agree to it, then they have to decide whether they want  
21 to work and file a motion to say that they have benefited the  
22 estate and should be treated accordingly under 506(c), or  
23 they don't have to work. I mean, I can't -- can't make them  
24 work for nothing.

25           ATTORNEY (Not ID'd on log sheets): Similarly,

1 they have proposed a Chapter 11 Trustee will have similar  
2 decisions (unclear)

3 THE COURT: Dissimilar -- I mean, yeah -- I mean,  
4 this isn't going to be limited to the Receiver, as everybody  
5 knows. We're going to be in the same situation going  
6 forward. I mean, the only advantage to its -- me converting  
7 the case I guess is that, you know, the Chap -- the Interim  
8 Trustee doesn't have a lot of choice but to take the case.

9 ATTORNEY: (unclear)

10 THE COURT: You know? So --

11 ATTORNEY: (unclear) surprised, being a little  
12 nervous (unclear)

13 THE COURT: Yeah. I mean, that -- but, I mean, if  
14 we don't -- we can't fund it going forward, then I don't know  
15 what else we do at that point. Do the petitioning creditors  
16 have any other suggestions?

17 MR. AMES: We'll be doing some heavy thinking in  
18 the next day or so, Judge.

19 THE COURT: All right, well, you all need to  
20 negotiate that. That's fine. Continue the discussions.

21 What about expanding the role of the Receiver? One  
22 of the things that you touched upon, which we touched upon at  
23 the last hearing was the collection of accounts receivable.  
24 I think there was some reluctance by at least some creditors  
25 for that activity to continue, maybe cause there is some



1 dispute as to who has priority on the accounts.

2 MS. LEWIS: Your Honor, I believe that the dispute  
3 was raised from one the counsel -- the prior counsel to  
4 Superior. I do not know that Superior has that concern  
5 anymore. It is something that the Receiver would like to  
6 continue to do. The Receiver does believe that it is  
7 important to make these phone calls, because what we're  
8 determining -- I had a proffer for Your Honor to go through  
9 everything the Receiver had been doing to give the Court some  
10 color; but one of the things the Receiver is finding out is  
11 as they make these phone calls for the receivables, they're  
12 finding out that their cattle are grazing there, but no money  
13 is due and owing -- owing to the Receiver other than  
14 ultimately upon the sale of cattle. So we are finding a lot  
15 of information out as we are making those phone calls and  
16 following up and sending letters.

17 THE COURT: Okay.

18 MS. LEWIS: So from the Receiver's standpoint, it  
19 is in the Receiver's business judgment, for the best interest  
20 of the creditors, that it continues to look for and follow up  
21 with receivables as well as other assets.

22 And -- oh, the other think that this -- which  
23 reminded me of is that we have made some inventory site  
24 visits, but that was on our list of things that we were going  
25 to do is continue to make inventory site visits, so that we

1 are able to get lots of yard sheets and that kind of thing  
2 from the various feed lots, so that we're able to determine  
3 whose cattle are at the various feed lots.

4 And, in fact, one site visit produced some yard  
5 sheets that were not -- it was not listed as Eastern  
6 Livestock, but in fact, was listed as East-West Trucking  
7 Livestock. So I had a conversation with Mr. Walro last week,  
8 provided him the information, and we're not sure whether  
9 they're Eastern Livestock's cattle or East-West Trucking's  
10 cattle, but it has been very helpful to have those site  
11 visits and phone calls so that we're able to identify  
12 collateral which -- whatever company and whatever secured  
13 parties ultimately will benefit, some creditor will benefit.

14 THE COURT: All right. Does anybody object to the  
15 Receiver attempting to collect and further investigate the  
16 status of accounts receivables in this interim period?

17 ATTORNEY: (Not ID'd on log sheet) Your Honor, I --

18 THE COURT: Yeah, go ahead.

19 ATTORNEY: The only thing -- yeah -- I think the  
20 only issue that was raised at hearing from the secured  
21 creditors' side was that which the secured creditors would  
22 willingly pay for or allow their collateral to be used for,  
23 and that was those direct sale expenses.

24 The only objection to having a larger role on the  
25 part of the Receiver as Custodian to do other things was on

1 the part of (unclear) that former counsel. But we did not  
2 -- we were not consenting to the use of our -- what we deemed  
3 to be our cash collateral, which this estate is in possession  
4 of, to pay for investigations or ongoing administrative  
5 expenses of this proceeding unless we work something out.

6 So we didn't object to their dunning people for  
7 receivables. We simply said our 200 and -- what we think are  
8 our 260 head of cattle, if they're sold, you pay those  
9 expenses in the protocol order, and everything else goes into  
10 -- goes into escrow until we work out a funding mechanism, if  
11 one can be worked out, for the Receiver.

12 THE COURT: Well, go ahead.

13 ATTORNEY (Not ID'd on log sheet) MR. LaTOUR? OR MR.  
14 KING?: Your Honor, I think that we're talking about the  
15 time period between now and the appointment of a Trustee.

16 During that time period the only reservation that  
17 Fifth Third Bank would have would be that significant  
18 compromises of the claims not occur, so that if it's  
19 something that should be noticed under 9019, that that would  
20 happen; but if it's account reconciliation or clean-up, that  
21 sort of thing, it makes sense to me to collect for the  
22 accounts receivable.

23 THE COURT: Are you compromising the accounts?

24 MS. LYNCH: No, sir.

25 THE COURT: So you're not entering into deals to

1 take fifty per cent or whatever?

2 MS. LYNCH: No.

3 THE COURT: You're just --

4 MS. LYNCH: I -- it -- it would be all I called,  
5 defined as "identification and validation."

6 THE COURT: All right. You can continue to do  
7 that. Or you can begin again doing that, or -- let's don't  
8 do any on-site visits, though, because unless they -- unless  
9 the banks come to an agreement and they're willing to pay for  
10 them.

11 But if the banks don't come to an agreement -- if  
12 the secured lenders don't come to an agreement to fund this  
13 (unclear) Trustee, I'll be looking for your motion, Mr.  
14 Wharton, to convert the case.

15 MR. WHARTON: Or perhaps and/or dismiss. And  
16 perhaps right back to the state court Receiver.

17 THE COURT: One or the other, but we can't operate  
18 a Chapter 11 if we don't -- if we're not going to have a  
19 carve-out for a Trustee. I mean, particularly in a situation  
20 where the Court has no choice but to appoint a Trustee when  
21 there's no op -- nobody there running the store, and there's  
22 80 million dollars of bad checks out -- floating -- we have a  
23 Trustee. The integrity of the system demands it. There  
24 has to be a neutral party in charge.

25 So I have no choice in that way. It would either

1 be an Interim Trustee, a Receiver, or a Chapter 11 Trustee,  
2 and that's something the parties should keep in mind as  
3 they're negotiating.

4 Okay, anything else today? Yes.

5 ATTORNEY (not ID'd on the log sheet): Your Honor,  
6 I just wanted clarification. There is a motion before you  
7 that I don't think you've ruled on -- the motion to operate,  
8 pending the appointment of a Trustee. I think I know what  
9 you're going to rule --

10 THE COURT: Oh, I'm granting that motion.

11 ATTORNEY: Okay. You said --

12 THE COURT: I'm sorry.

13 ATTORNEY: You haven't said the words yet.

14 THE COURT: I probably have not said the words,  
15 but I am granting that motion.

16 We have a -- there was a motion filed also for  
17 relief from stay. Was that your motion, Mr. Meyer?

18 MR. MEYER: Yes. (unclear, not near microphone)

19 THE COURT: And that's been --

20 MR. MEYER: Yeah, it was filed about a half an  
21 hour ago.

22 THE COURT: Filed about a half an hour ago? Well,  
23 I'm right on top of these matters, with a little assistance.

24 (Pause)

25 ATTORNEY: (unclear, not near microphone) this

1 one? Because if he grants this one, this has an authority to  
2 pay. (unclear) determine which -- (unclear) which order,  
3 which motion was being granted, (unclear) docket number.

4 MS. LEWIS: I'm assuming this is my motion of the  
5 Receiver to --

6 THE COURT: There was a new one --

7 MS. LEWIS: (unclear) with respect to --

8 ATTORNEY: Your Honor, the only reason I mentioned  
9 this Docket #52, that motion was -- the payment by the  
10 Receiver costs, for which there may not be any money.

11 MS. LEWIS: Well, there *is* money. It's a question  
12 of (unclear) Receiver's bank account, and I guess the real  
13 question is whether or not we're going to be refusing to  
14 consent to that, or whether or not the Court can order the  
15 approval of that motion out of the money that is in the  
16 Receiver's account, which would come out --

17 THE COURT: I'm only granting -- I'm only order --  
18 allowing the Receiver to operate in the pre-appointment  
19 period. I'm not ruling on -- I'm not authorizing the payment  
20 of the Receiver. As I said earlier, that would have to be  
21 done by agreement -- are you talking about the budget?

22 MS. LEWIS: I'm talking about, Your Honor, the  
23 budget, which is the employees --

24 THE COURT: Oh, the budget,

25 MS. LEWIS: -- because we will have to go back

1 across the street and ask all the employees to leave, because  
2 I can't ask the Receiver --

3 THE COURT: No, I am authorizing the budget. If  
4 they can't come to an agreement to pay that -- if they won't  
5 fund that, then you go -- then you shut it down because you  
6 don't have any money to operate. But I'm authorizing you to  
7 expend those monies, if you have those monies.

8 MS. LEWIS: Thank you, Your Honor.

9 ATTORNEY: Ms. Lewis, you have those.

10 ATTORNEY: You have the money.

11 MS. LEWIS: We have -- we have approximately  
12 \$700,000 in a bank account, which we will be using to make  
13 payroll tomorrow and make the expenses that were listed on  
14 the attached budget.

15 MS. LYNCH: And just -- just for the record, that  
16 does not include the money from the proceeds of the disputed  
17 cattle, which were sold first. Those are in a separate  
18 account.

19 THE COURT: All right.

20 ATTORNEY: Thank you.

21 MS. LYNCH: Thank you.

22 THE COURT: Okay, yeah, then you pay those  
23 amounts.

24 MS. LEWIS: Thank you, Your Honor.

25 THE COURT: All right.

1 MS. LEWIS: And I am not aware of the relief from  
2 stay motion, Your Honor.

3 THE COURT: Well, I didn't think anyone would be.  
4 I was just going to look, as far as calendaring -- yep --  
5 now, Mr. Morris, you filed a refusal to waive with that?

6 MR. MORRIS: That's correct, Your Honor.

7 THE COURT: Are you busy on the 24th?

8 MR. MORRIS: Your Honor, I will be here, or  
9 somebody will be here (unclear)

10 THE COURT: Well, it's going to have to be next  
11 week or the 12th of January.

12 MR. MORRIS: The 12th of January is fine, Your  
13 Honor.

14 THE COURT: All right, we'll do it the 12th of  
15 January.

16 MR. MORRIS: What time, Your Honor?

17 THE COURT: Let's say ten a.m.

18 MR. MORRIS: Thank you.

19 THE COURT: And that will be also an omnibus day  
20 in this matter. Any other motions that are filed between  
21 now and then will be scheduled for the 12th of January at ten  
22 a.m.

23 MS. LEWIS: Your Honor, if I may, I am hopeful  
24 that the secured creditors in this case will come together  
25 and come up with a proposal for funding the Chapter 11, and I



1 wanted to raise that to the Court because I would expect that  
2 if there is a proposal, that you would need to seek more  
3 immediate relief from the funding of the case sooner than  
4 that. So I wanted to at least alert the Court to that fact.

5 THE COURT: We can do it on an emergency basis.  
6 Probably we'll do it telephonically.

7 MS. LEWIS: Okay. Thank you, Your Honor.

8 THE COURT: All right, anything else? Okay.  
9 We're adjourned.

10 ATTORNEYS: Thank you, Your Honor.  
11 (End at 2:56:15 p.m.)

12 \* \* \* \* \*

13 I certify that the foregoing is a true and accurate  
14 transcript from the digitally sound recorded record of the  
15 proceedings.

/s/ Gloria C. Irwin

1/5/2011

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